

JDPulse – Navigating Section 43B(h) for MSME Deductions

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Disallowance of Expenditure under Section 43B(h) of Income Tax Act, 1961

SECTION 43B(H)

The Finance Act of 2023 marked a significant milestone in India's taxation landscape with an amendment to Section 43B of the Income Tax Act, 1961. This amendment, introducing clause (h), is designed to fortify the financial resilience of **micro and small enterprises** by ensuring prompt payments and shielding their liquidity against potential delays in customer payments. Section 43B, pivotal in governing the allowability of specific deductions based on actual payment, sets forth guidelines where certain expenses are deductible for calculating income from business or profession only when paid within the previous year. This amendment underscores the government's commitment to supporting the vitality of small-scale enterprises and fostering a conducive business environment.

*Section 43B (h): "any sum payable by the assessee to a **MICRO or SMALL** enterprise beyond the time limit specified in 15 of the Micro, Small and Medium Enterprises Development Act, 2006,"*

This amendment is made applicable from AY 2024-25 i.e. FY 2023-24

Under this amendment, if a **Micro and small enterprises supplier** ("Supplier") provides goods or services to a buyer, the buyer must make payment within the agreed period, but no later than 45 days (if the terms of payments are not agreed – 15 days). However, if payment is made after the specified period and falls in the next financial year, the purchases will be disallowed in the year of purchase and allowed as a deduction in the next financial year. For example, if purchases from a Micro and small enterprises are made on February 1, 2024, but payment is made on April 10, 2024, beyond the 45-day agreed period, these purchases will be disallowed in FY 2023-24 and allowed in FY 2024-25

Section 15 of the MSME Development Act, 2006 defines that "Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement on this behalf, before the appointed day:*

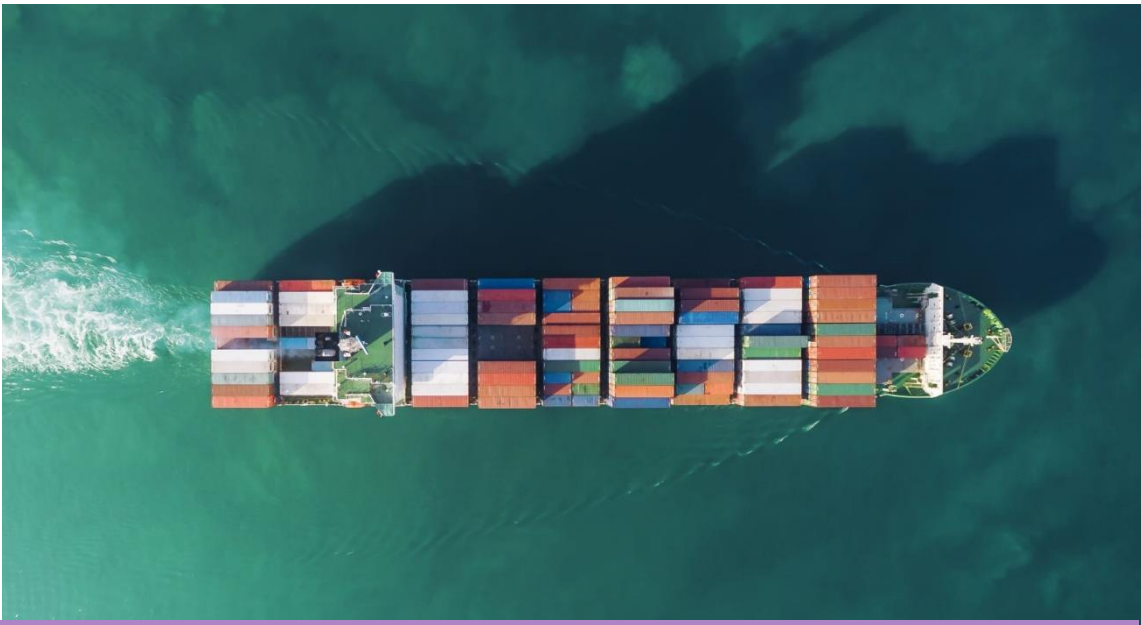
'Appointed day' means the day following immediately after the expiry of the period of **fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier."*

In the case of invoices issued between February 16, 2024, and March 31, 2024, if they are paid within 45 days, they are also allowed as expenses in FY 2023-24, assuming a written agreement of 45 days exists between the buyer and the supplier. If not paid within the due date, expenses are allowed in the year of payment only. For instance, if a purchase invoice dated March 31, 2024, is paid in June 2024, it will be allowed as an expense in FY 2024-25 and not in FY 2023-24.

In cases of issue with regards to the quality of goods supplied or delayed supply or any other invoice related dispute and if such disputes has been communicated within 15 days of delivery date, the payment time limit would begin from date the resolution of any invoice-related dispute.

It's crucial to note that this provision, outlined in Section 43B(h), does not extend to traders or medium enterprises as defined under MSME. Additionally, Section 43B(h) is not applicable for amounts payable for invoices raised and outstanding on or before March 31, 2023

In conclusion, the alignment of section 43B(h) of the Income Tax Act and the MSME Act, 2006, creates a strict framework for MSME payment enforcement. Businesses must navigate these regulations meticulously to comply with payment deadlines and interest provisions. This addition of JDPulse is an attempt provides essential guidance for businesses to understand, implement, and comply with these regulations, ensuring sound financial practices and positive vendor relationships.



FAQ: Understanding Section 43B Amendments

1. WHAT ARE TYPES OF MSME ENTITIES ?

Micro small and medium enterprises, classified from July 1, 2020, are defined based on investment in Plant & Machinery or Equipment and annual turnover.

Enterprise Size	Manufacturing Criteria	Service Criteria
Micro	Investment ≤ Rs.1 Cr	Investment ≤ Rs.1 Cr
	Annual turnover ≤ Rs.5 Cr and	Annual turnover ≤ Rs.5 Cr and
Small	Investment ≤ Rs.10 Cr and	Investment ≤ Rs.10 Cr and
	Annual turnover ≤ Rs.50 Cr	Annual turnover ≤ Rs.50 Cr
Medium	Investment ≤ Rs.50 Cr and	Investment ≤ Rs.50 Cr and
	Annual turnover ≤ Rs.250 Cr	Annual turnover ≤ Rs.250 Cr

2. TO WHOM SECTION 43B (H) IS APPLICABLE?

This section is applicable to *all assessee if they are receive supply of goods or services from either a manufacturer or service provider which is either Micro or Small Enterprise ("hereinafter Buyer")* then the buyer is required to make the payment to the supplier or service provider as per the terms between both but not beyond 45 days. If there is no such written agreement, the section mandates that the payment shall be made within 15 days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. It can be noted, even in case No tax Audit upto turnover of 10 Crores, Section 43B(h) still applicable and effect to be given in computation of income for such disallowance.

3. WHAT ARE TAX IMPLICATION OF SECTION 43B ON BUYER?

This amendment to section 43B of the Act allows the payment as a deduction only on a payment basis. In short, non-compliance 43B(h), would attract disallowance in the FY of accrual and allowed deduction in FY when payment is made. It can be allowed on an accrual basis only if the payment is within the time mandated under section 15 of the MSMED Act.

4. WHETHER THIS AMENDMENT CAN BE MADE APPLICABLE FOR AN AMOUNT OUTSTANDING TO MICRO AND SMALL ENTERPRISE AS ON 31/03/2023?

This amendment is made applicable from AY 2024-25 i.e. FY 2023-24. Hence, this amendment is not applicable for an amount outstanding to micro and small enterprises as of 31/03/2023.

5. HOW TO VERIFY WHETHER A SUPPLIER IS REGISTERED OR NOT?

Buyer can verify MSME registration and the type of enterprise (Micro/ Small/ Medium) using the registration number on MEME portal.

https://udyamregistration.gov.in/Udyam_Verify.aspx

6. IF A SUPPLIER HAS NOT INTIMATED HIS REGISTRATION UNDER MSME, WHAT IS OBLIGATIONS OF BUYER?

It is the responsibility of the supplier to intimate its registration to the buyer. If in any case, the supplier has not in any manner intimated his MSME registration, then in the absence of availability of information, disallowance may not be made under section 43B(h). However, it is recommended for Buyers to obtain an undertaking from MSME Supplier about their MSME status and examine their classification.

7. WHETHER SEC 43B(H) IS APPLICABLE FOR DUES OUTSTANDING TO TRADERS HAVING MSME REGISTRATION ?

If the supplier is a trader (wholesale or retailer) and holding UDYAM registration, then he does not fall under the definition of Micro or Small Enterprises for Section 43B(h). Reference can be drawn from section 2(e) of MSMED act, 2006 read with Office Memorandum (OM) No. 5/2(2)/2021-E/P & G/Policy dated July 2, 2021. However, it is recommended for Buyers to obtain an undertaking from MSME Supplier about their MSME status and examine their classification.

If a supplier is engaged in both i.e. trading as well as manufacturing/services, in such a case, Sec 43B(h) may be made applicable for dues outstanding on conservative basis.

8. WHAT IS IMPLICATION FOR DUES OUTSTANDING IN RELATION TO CAPITAL EXPENDITURE?

43B can be made applicable only to those deductions which is otherwise available under the Income Tax Act. Capital expenditure is not an allowable expense under the Income Tax Act. Hence, no disallowance will be attracted under section 43B(h) for dues outstanding to capital expenditure.

9. WHAT IF THE BUYER MAKES PAYMENT TO THE SUPPLIER AFTER 15/45 DAYS, BUT BEFORE FILING THE RETURN OF INCOME FOR THAT FINANCIAL YEAR?

As per the amendment made in the first proviso to section 43B, the benefit of the first proviso will not be available for due to micro and small enterprises, Hence, though payment is made before filing a return of income, the deduction can only be claimed in the year in which actual payment is made and not in the year of accrual.

10. WHAT ARE THE IMPLICATIONS ASSESSEE OPTING PRESUMPTIVE TAXATION I.E., 44AD/44ADA/44AE ETC?

Section 43B does not apply to the assessee opting for presumptive taxation. Hence, no disallowance can be made in such cases

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